

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3
4 Lyndalou Bullard,

5 Plaintiff

6 v.

7 Las Vegas Valley Water District, et al.,

8 Defendants
9

2:15-cv-00948-JAD-VCF

**Order Granting Motion
for Summary Judgment**

[ECF Nos. 71, 81]

10 Lyndalou Bullard found herself out of work when the local water utility companies laid
11 off more than 100 employees during a massive downsizing in April 2014. She now sues the Las
12 Vegas Valley Water District, claiming that it breached her employment contract; discriminated
13 against her based on her age, sex, and disability; retaliated against her for filing workplace-
14 related complaints; and negligently hired, trained, supervised, and retained the supervisor
15 responsible for firing her. The District moves for summary judgment on all of Bullard’s claims,
16 arguing that the evidentiary record simply does not support any of her theories.¹ Because the
17 District has demonstrated that there is no genuine issue of fact on any claim and that it is entitled
18 to judgment as a matter of law, I grant summary judgment in the District’s favor and close this
19 case.

20 **Background**

21 Bullard applied to the Las Vegas Valley Water District as an employee-development
22 coordinator in October 1994.² While interviewing with the District’s then-General Manager Pat
23 Mulroy, Bullard was told that “[t]here’s a lot of opportunity” at the District, and “[i]t’s a
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26 _____
27 ¹ ECF No. 71. I find this motion suitable for disposition without oral argument. L.R. 78-1.

28 ² ECF No. 71-7 at 3–4 (32:13–33:6 of the transcript).

1 wonderful place to work and a wonderful place for retirement.”³ Bullard’s offer letter did not
2 promise her a job for life,⁴ and she never signed an express, written employment contract.⁵
3 Bullard understood Nevada to be an at-will-employment state, and she heard her supervisor Pat
4 Maxwell and an employee-relations manager refer to employment at the District as “at-will.”⁶
5 She did not believe her position to be exempt from that at-will classification.⁷

6 Bullard received a copy of the employee handbook when she was hired.⁸ That handbook
7 contains a “bumping and layoff” policy that states that, “unless business needs dictate otherwise,
8 employees . . . will generally be laid off in the following order: 1. temporary employees, 2.
9 employees in the introductory period, and 3. regular employees.”⁹ So, an employee targeted for
10 layoff may, under certain circumstances, “bump” another employee out of his job and take it:

11 Employees who are subject to layoff but who have a greater length
12 of service with the District than employees in another equal or
13 lower-paid job classification may, if the District concludes that
14 they are qualified, (1) be permitted to “bump” the least senior
employee from the lower paid classification, (2) may be assigned
elsewhere to available temporary work which they are qualified to

15 ³ *Id.* at 6–7 (36:25–37:2 of the transcript).

16 ⁴ *Id.* at 10 (43:19–25 of the transcript).

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18 ⁵ *Id.* at 11–12 (44:17–45:6). This excerpt from Bullard’s deposition merely states that she
19 received and signed documents as part of the hiring process, but she doesn’t remember if any of
the documents were titled “Employment Contract” or “Employment Agreement.”

20 ⁶ ECF No. 71-7 at 16 (59:1–19 of the transcript). The District offers formal evidentiary
21 objections to various statements in Bullard’s declaration. *See* ECF No. 83. Although I have
22 thoughtfully and thoroughly considered these objections in evaluating whether the parties have
23 met their respective burdens on summary judgment, I do not accept the District’s tacit invitation
24 to make formal rulings on each objection, checking the boxes that defense counsel have
25 provided. *See id.* Counsel is cautioned that separating out objections in this manner is not
helpful to the court and only delays the prompt resolution of summary-judgment motions. In the
future, counsel should weave evidentiary objections into the summary-judgment argument itself.

26 ⁷ *Id.* at 17 (60:20–22 of the transcript).

27 ⁸ *Id.* (60:23–25 of the transcript).

28 ⁹ *Id.* at 23.

1 perform, or (3) if no such work is available, be laid off.¹⁰

2 But the first page of that handbook advised that “[n]othing in this handbook should be interpreted
3 to grant an employee a right or entitlement to employment nor, once employed, a right or
4 entitlement to continued employment or a guaranteed continuance of any of the working
5 conditions, pay provisions, or benefits set forth in this handbook.”¹¹ And language on the
6 bumping-policy page reiterates that “the employment relationship at the District is considered to
7 be ‘at-will’” and is “subject to termination at any time for whatever reason.”¹² Bullard contends,
8 however, that the bumping policy “indicates there is an agreement and understanding” of “an
9 employment contract between [herself] and the District.”¹³

10 In 2011 and 2013, Bullard filed hostile-work-environment complaints against her
11 supervisor, Maxwell.¹⁴ In response to her 2011 complaint, the District’s deputy general manager
12 told Bullard in writing that he “share[d her] concerns,” “believe[d] that the environment [needed]
13 to change,” and had “taken action that [he] deem[ed] appropriate to correct the problems [Bullard
14 had] described.”¹⁵ An independent investigator looked into Bullard’s 2013 complaint, and after
15 reviewing the District’s policies and interviewing 13 employees, the investigator found that
16 Bullard’s claim of “alleged harsh treatment from Pat Maxwell was not substantiated.”¹⁶

17 Prior to 2014, the District was focused on expansion, but its mission changed in 2014 to
18 focus more on operations management, customer service, and resources management.¹⁷ In-class

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20 ¹⁰ *Id.*

21 ¹¹ ECF No. 71-1 at 4.

22 ¹² *Id.*

23 ¹³ ECF No. 71-7 at 28 (100:10–18 of the transcript).

24 ¹⁴ *Id.* at 18 (62:1–7 of the transcript); ECF No. 71-11 at 11–12 (251:6–252:2 of the transcript).

25 ¹⁵ ECF No. 71-7 at 37.

26 ¹⁶ ECF No. 71-8 at 22–26.

27 ¹⁷ ECF No. 71-2 at 19–20 (72:1–12, 73:19–25 of the transcript).

1 employee development had dropped from 23,948 hours in 2008 to 9,705 hours in 2013,¹⁸ so as
2 part of that new mission, the District shifted its training and employee-development model from
3 one that was in-class to one that was demand-based, online, and on the job.¹⁹ Maxwell decided
4 that the existing employee-development team—Bullard’s team—“was no longer essential for the
5 District to carry out its” new mission.²⁰ So, the whole team (save one member) was laid off
6 when the District and its affiliate, the Southern Nevada Water Authority, reduced their workforce
7 by more than 100 employees in April 2014.²¹ Bullard’s job was not spared, and she sued the
8 District.²²

9 **Discussion**

10 After two rounds of dismissal motions,²³ Bullard’s case has been pared down to six
11 claims against the District: (1) discrimination based on sex, age, and disability in violation of
12 NRS 613.330; (2) retaliation in violation of NRS 613.340 for filing a charge of discrimination
13 with the Equal Employment Opportunity Commission (EEOC) against Maxwell; (3) negligent
14 hiring, training, supervision, and retention of Maxwell; (4) breach of contract; (5) breach of the
15 implied covenant of good faith and fair dealing; and (6) age discrimination in violation of the
16 Age Discrimination in Employment Act (ADEA). The District moves for summary judgment on
17 all of them.

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20 ¹⁸ ECF No. 71-8 at 3, ¶ 8; 10, response to claim V.

21 ¹⁹ *Id.* at 3, ¶¶ 9–10.

22 ²⁰ *Id.* at ¶ 11.

23 ²¹ *Id.*; ECF No. 71-6 at 19.

24 ²² Bullard is one of roughly a dozen employees who filed suit after the mass layoffs. *See also*
25 *Acheampong et al. v. Las Vegas Valley Water District*, 2:15-cv-00981-RFB-PAL. Although she
26 originally sued her supervisor, too, the claims against Maxwell were dismissed. *See* ECF Nos.
43 (motion), 60 (minutes).

27 ²³ *See* ECF Nos. 7 (original motion to dismiss); 29 (minutes of hearing); 31 (transcript of
28 hearing); 36 and 43 (second round of motions to dismiss); 60 (minutes of hearing).

1 **A. Summary-judgment standard**

2 Summary judgment is appropriate when the pleadings and admissible evidence “show
3 [that] there is no genuine issue as to any material fact and that the movant is entitled to judgment
4 as a matter of law.”²⁴ When considering summary judgment, the court views all facts and draws
5 all inferences in the light most favorable to the nonmoving party.²⁵ If reasonable minds could
6 differ on material facts, summary judgment is inappropriate because its purpose is to avoid
7 unnecessary trials when the facts are undisputed, and the case must then proceed to the trier of
8 fact.²⁶

9 If the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue
10 of material fact, the burden shifts to the party resisting summary judgment to “set forth specific
11 facts showing that there is a genuine issue for trial.”²⁷ The nonmoving party “must do more than
12 simply show that there is some metaphysical doubt as to the material facts”; she “must produce
13 specific evidence, through affidavits or admissible discovery material, to show that” there is a
14 sufficient evidentiary basis on which a reasonable fact finder could find in her favor.²⁸

15 **B. Evaluating Bullard’s claims**

16 ***1. Bullard makes no effort to defend her state-law-based employment claims.***

17 In her third claim for relief, Bullard alleges that the District violated NRS 613.330 by
18 discriminating against her “with respect to her sex, age, disability, and protected activity.”²⁹
19 Although section 613.330 prohibits an employer from discriminating against an employee based
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21 ²⁴ See *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)).

22 ²⁵ *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

23 ²⁶ *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); see also *Nw. Motorcycle Ass’n*
24 *v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

25 ²⁷ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323.

26 ²⁸ *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted); *Bhan v.*
27 *NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson*, 477 U.S. at 248–49.

28 ²⁹ ECF No. 32 at 17.

1 on her race, age, or disability,³⁰ it does not prohibit retaliation for protected workplace-related
2 complaints; NRS 613.340 does that. So I liberally construe Bullard’s third claim as one based on
3 NRS 613.330 *and* NRS 613.340. In her ninth claim for relief,³¹ Bullard claims that the District
4 was negligent in its hiring, training, supervision, and retention of Maxwell.³² I address all of
5 these claims first because Bullard did not respond to the District’s arguments for summary
6 judgment on any of them. Although I recognize that the failure to oppose a summary-judgment
7 request does not compel summary judgment by default,³³ Bullard’s silence has left her unable to
8 sustain her burden on these claims.

9 ***a. Sex, age, and disability discrimination in violation of NRS § 613.330***

10 Section 613.330 of the Nevada Revised Statutes is a codified, state-law amalgam of three
11 federal schemes: Title VII,³⁴ the Age Discrimination in Employment Act (ADEA),³⁵ and the
12 Americans with Disabilities Act (ADA).³⁶ Claims under this Nevada statute are evaluated the
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15 ³⁰ NEV. REV. STAT. § 613.330.

16 ³¹ Bullard’s complaint does not contain a sixth cause of action—it jumps from the fifth to the
17 seventh—but I use her labels to avoid confusion. *See* ECF No. 32 at 18–19.

18 ³² *Id.* at 21–22.

19 ³³ *See, e.g., Heinemann v. Satterberg*, 731 F.3d 914, 916–17 (9th Cir. 2013) (courts may not
20 apply failure-to-oppose rules to effect summary judgment by default).

21 ³⁴ *Pope v. Motel 6*, 114 P.3d 277, 280 (Nev. 2005) (“In light of the similarity between Title VII of
22 the 1964 Civil Rights Act and Nevada’s anti discrimination statutes, we have previously looked
23 to the federal courts for guidance in discrimination cases.”); *see also Apeceche v. White Pine*
24 *Cnty.*, 615 P.2d 975, 977 (Nev. 1980) (holding that “NRS 613.330(1) is almost identical to §
703(a)(1) of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-2(a)(1)”).

25 ³⁵ *Liston v. Las Vegas Metropolitan Police Dep’t*, 908 P.2d 720, 721 n.2 (Nev. 1995) (“The
26 action was brought pursuant to NRS 13.330, Discrimination on the Basis of Age, which is based
on 29 U.S.C. § 626(b) (1967), the Age Discrimination in Employment Act.”).

27 ³⁶ *Littlefield v. Nevada, ex. rel. Dep’t of Public Safety*, 195 F. Supp. 3d 1147, 1152 (D. Nev.
28 2016) (“Nevada courts apply the ADA approach to plaintiff’s state law claims.”).

1 same way as their federal analogs.³⁷ Before filing a civil lawsuit, “an employee alleging
2 employment discrimination [must] exhaust her administrative remedies.”³⁸ “Incidents of
3 discrimination not included in an EEOC charge may not be considered by a federal court unless
4 the new claims are like or reasonably related to the allegations contained in the EEOC charge.”³⁹

5 *i. Sex and disability discrimination*

6 The District argues that summary judgment is appropriate on the sex- and disability-based
7 components of Bullard’s discrimination claim because she filed an EEOC complaint for only
8 age-based discrimination and retaliation.⁴⁰ Indeed, on the EEOC’s charge-of-discrimination
9 form, in the section labeled “DISCRIMINATION BASED ON (Check appropriate box(es):),”
10 Bullard checked only the “retaliation” and “age” boxes.⁴¹ She did not check any of the other
11 boxes for race, color, sex, religion, national origin, disability, genetic information, or other.⁴²
12 And in describing the specifics of her charge, Bullard explained that she was eliminated while
13 two other Human Resources Managers—one in her mid 40s and another in his early
14 50s—maintained employment.⁴³ Based on the checked boxes and the charge’s description, sex
15 and disability discrimination are not “like or reasonably related to the allegations contained in the
16 EEOC charge.”

17 Bullard makes no effort to deny that her failure to include sex and disability as bases for
18 her EEOC charge justifies summary judgment on those portions of her NRS 613.330 claim.

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20 ³⁷ See *supra* notes 34–36.

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22 ³⁸ *Pope*, 114 P.3d at 280 (state-law claims need to be exhausted); *Lyons v. England*, 307 F.3d
1092, 1103–04 (9th Cir. 2002) (federal-law claims need to be exhausted).

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24 ³⁹ *Lyons*, 307 F.3d at 1104.

25 ⁴⁰ ECF No. 71 at 21.

26 ⁴¹ ECF No. 71-8 at 6.

27 ⁴² *Id.*

28 ⁴³ *Id.*

1 Because her failure to clear this exhaustion-of-administrative-remedies hurdle or demonstrate
2 that she did not need to do so compels me to grant summary judgment for the District, I grant the
3 motion on this basis and do not reach the District’s arguments on the merits of Bullard’s sex- and
4 disability-discrimination claims.

5 **ii. Age discrimination**

6 In the pathmaking case of *McDonnell Douglas Corporation v. Green*,⁴⁴ the United States
7 Supreme Court established a burden-shifting framework for courts to apply to Title VII-
8 discrimination claims.⁴⁵ “A discrimination complainant must first establish a prima facie case of
9 disparate treatment.”⁴⁶ “In general, a plaintiff must present evidence of ‘actions taken by the
10 employer from which one can infer, if such actions remain unexplained, that it is more likely than
11 not that such action was based upon race or another impermissible criterion.’”⁴⁷ If the plaintiff
12 presents a prima facie case, “the burden shifts to the defendant to produce some evidence
13 demonstrating a legitimate, nondiscriminatory reason for the employee’s termination.”⁴⁸ And if
14 the defendant meets that burden, “any presumption that the defendant discriminated ‘drops from
15 the case,’ and the plaintiff must then show that the defendant’s alleged reason for termination
16 was merely a pretext for discrimination.”⁴⁹

17 This burden-shifting framework has been extended to age-discrimination claims under the
18 ADEA.⁵⁰ To establish a prima facie case of age discrimination in the terminated-due-to-a-

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20 ⁴⁴ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

21 ⁴⁵ *Id.* at 802.

22 ⁴⁶ *Bodett v. CoxCom, Inc.*, 366 F.3d 736, 743 (9th Cir. 2004) (internal citations and quotations
23 omitted).

24 ⁴⁷ *Id.* (quoting *Gay v. Waiters’ Union*, 694 F.2d 531, 538 (9th Cir. 1982)).

25 ⁴⁸ *Id.*

26 ⁴⁹ *Id.*

27 ⁵⁰ *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th Cir. 2008); *Enlow v. Salem-*
28 *Keizer Yellow Cab Co.*, 389 F.3d 802, 812 (9th Cir. 2004).

1 reduction-in-workforce context, a plaintiff must show that she was “(1) at least forty years old,
2 (2) performing [her] job satisfactorily, (3) discharged, and (4) . . . discharged under
3 circumstances otherwise ‘giving rise to an inference of age discrimination.’”⁵¹ She also “must
4 prove . . . that age was *the* ‘but-for’ cause of the employer’s adverse action.”⁵² “Unlike Title VII,
5 the ADEA’s text does not provide that a plaintiff may establish discrimination by showing that
6 age was simply a motivating factor.”⁵³

7 The District argues that Bullard cannot present a prima facie case of age discrimination
8 and, even if she could, she is unable to show that the District’s legitimate, nondiscriminatory
9 reasons for terminating her were merely pretext for age discrimination.⁵⁴ Bullard offers no
10 response,⁵⁵ so she has failed to show that genuine issues of material fact exist to preclude me
11 from granting summary judgment for the District on the age-discrimination portion of her NRS
12 613.330 claim. However, Bullard does oppose the District’s summary-judgment request on her
13 *ADEA-based*, age-discrimination claim, and I address those arguments in Section B(3) below.
14 But, for now, I grant summary judgment for the District on Bullard’s state-law-based age-
15 discrimination claim.

16 ***b. Retaliation for the 2011 and 2013 hostile-work-environment complaints***
17 ***in violation of NRS 613.340***

18 Nevada and federal law both prohibit employers from retaliating against an employee
19 “because [she] has opposed any practice made an unlawful employment practice by [Title VII or
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21 ⁵¹ *Diaz*, 521 F.3d at 1207; *see also Rose v. Wells Fargo & Co.*, 902 F.2d 1417, 1421 (9th Cir.
22 1990) (“We have held that the failure to prove replacement by a younger employee is ‘not
23 necessarily fatal’ to an age discrimination claim where the discharge results from a general
reduction in the work force due to business conditions.”).

24 ⁵² *Shelley v. Geren*, 666 F.3d 599, 607 (9th Cir. 2012) (citing *Gross v. FBL Fin. Servs, Inc.*, 557
25 U.S. 167, 177 (2009) (emphasis added)).

26 ⁵³ *Shelley*, 666 F.3d at 607.

27 ⁵⁴ ECF No. 71 at 15–20.

28 ⁵⁵ *See generally* ECF No. 77.

Chapter 613 of the Nevada Revised Statutes], or because [she] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [those statutes].”⁵⁶ “To establish retaliation, the plaintiff must show: (1) she engaged in a protected activity; (2) she suffered an adverse employment action; and (3) a causal link exists between the protected activity and the adverse action.”⁵⁷ Like in age-discrimination claims, “but-for causation is required to satisfy the necessary element of a ‘causal link’ between the protected activity and the adverse employment action.”⁵⁸

“[I]n order to support an inference of retaliatory motive, the termination must have occurred ‘fairly soon after the employee’s protected expression.’”⁵⁹ The District argues that Bullard’s 2011 and 2013 complaints are simply too attenuated from her 2014 termination to give rise to the inference that the events are connected.⁶⁰ And it notes that the Ninth Circuit has found nine months between protected activity and adverse action to be too long to allow the inference.⁶¹ Bullard’s last protected activity occurred sometime before the report investigating her claim was issued on September 4, 2013,⁶² and it was based on an event in June 2013.⁶³ So more than seven and a half months passed between Bullard’s 2013 complaint and her April 15, 2014, termination. This temporal chasm is too wide to create the inference that Bullard’s inclusion in the District’s

⁵⁶ 42 U.S.C. § 2000e-3(a); NEV. REV. STAT. § 613.340(1).

⁵⁷ *Van Pelt v. Skolnik*, 897 F. Supp. 2d 1031, 1044 (D. Nev. 2012), *aff’d sub nom. Van Pelt v. Nevada, ex rel. Nevada Dep’t of Corr.*, 637 Fed. Appx. 307 (9th Cir. 2016).

⁵⁸ *Kennedy v. UMC Univ. Med. Ct.*, 2016 WL 4497062, at *5 (D. Nev. Aug. 25, 2016) (citing *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533 (2013)).

⁵⁹ *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1065 (9th Cir. 2002) (quoting *Paluck v. Gooding Rubber Co.*, 221 F.3d 1003, 1009–10 (7th Cir. 2000)).

⁶⁰ ECF No. 71 at 25.

⁶¹ See ECF No. 71 at 25 (citing *Manatt v. Bank of Amer.*, 339 F.3d 792, 802 (9th Cir. 2003)).

⁶² See ECF No. 71-8 at 24.

⁶³ ECF No. 32 at ¶ 86.

1 massive layoffs was retaliation for her individual, protected activity.

2 Bullard offers no response to the District's argument.⁶⁴ So she has failed to show that
3 genuine issues of fact exist on this claim. Accordingly, I grant summary judgment in the
4 District's favor on Bullard's state-law-based retaliation claim.

5 *c. Negligent hiring, training, supervision, and retention*

6 "The tort of negligent hiring imposes a general duty on an employer to conduct a
7 reasonable background check on a potential employee to ensure that the employee is suitable for
8 the position."⁶⁵ "An employer breaches this duty when it hires an employee even though the
9 employer knew, or should have known, of that employee's dangerous propensities."⁶⁶ And an
10 employer must use reasonable care in training, supervising, and retaining his employees "to make
11 sure that the employees are fit for their positions."⁶⁷

12 The District argues that summary judgment is appropriate on this claim because Bullard
13 fails to show that Maxwell was unfit for her position. It points out that Bullard has not
14 introduced "any evidence that the District hired Ms. Maxwell without conducting a reasonable
15 background check, that she had 'dangerous propensities' or that she was otherwise unfit for the
16 position."⁶⁸ Nor, it argues, can she show "that the District failed to train or supervise Ms.
17 Maxwell, or that she was not 'fit for her position.'"⁶⁹

18 Because Bullard has the burden of proof on this claim at trial, the District only needed to
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21 ⁶⁴ See generally ECF No. 77.

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23 ⁶⁵ *Vaughan v. Harrah's Las Vegas, Inc.*, 238 P.3d 863 (Nev. 2008) (citing *Burnett v. C.B.A.*
24 *Security Service*, 820 P.2d 750, 752 (Nev. 1991)) (internal quotations omitted).

25 ⁶⁶ *Id.* (citing *Hall v. SSF, Inc.*, 930 P.2d 94, 98 (Nev. 1996)).

26 ⁶⁷ *Hall*, 930 P.2d at 99 (citing 27 Am. Jur. 2d *Employment Relationship* §§ 475–76 (1996)).

27 ⁶⁸ ECF No. 71 at 27.

28 ⁶⁹ *Id.*

1 identify these deficiencies to shift the burden to Bullard to show a genuine dispute.⁷⁰ But
2 Bullard does not oppose or otherwise respond to the District’s argument,⁷¹ and the net result of
3 her silence is that she has failed to raise a genuine, triable issue of fact to save this claim from
4 summary adjudication. I therefore grant summary judgment in favor of the District on Bullard’s
5 ninth claim for relief.

6 **2. Bullard fails to show that she had an employment contract with the District.**

7 Bullard does make an effort to resist the District’s summary-judgment attack on her
8 remaining causes of action, the first of which is a claim for breach of contract. Although the
9 presumption in Nevada is that an employment relationship is an at-will one, not governed by a
10 contract, Bullard theorizes that she had an oral contract with the District for lifetime employment
11 and employee-handbook-based entitlements that should have kept her off the chopping block.
12 Those contracts were breached, she claims, when she was let go in 2014.⁷²

13 It is undisputed that Bullard did not sign an express, written employment contract,⁷³ and
14 she understood her job to be at will.⁷⁴ Nevertheless, she contends that statements made during
15 her interview that the District is “a wonderful place to work and a wonderful place for
16 retirement” created an oral employment contract.⁷⁵ She also theorizes that the District’s
17 hierarchical-termination and bumping policies in the handbook formed an implied employment
18 contract that should have saved her from getting fired.⁷⁶ Finally, she contends that the District
19 breached the covenant of good faith and fair dealing that Nevada law implies in those

21 ⁷⁰ *Celotex*, 477 U.S. at 323–24.

22 ⁷¹ *See generally* ECF No. 77.

23 ⁷² ECF No. 32 at 14–15.

24 ⁷³ *See supra* note 5 and accompanying text.

25 ⁷⁴ ECF No. 71-7 at 30 (102:1–5 of the transcript).

26 ⁷⁵ *Id.* at 6–7; ECF No. 77 at 5.

27 ⁷⁶ ECF No. 77 at 6.

1 employment contracts when they terminated her due to her age and her hostile-work-environment
2 complaints.⁷⁷ So she pleads a separate claim—her second cause of action—for breach of that
3 implied covenant.⁷⁸

4 ***a. Nevada’s at-will employment presumption***

5 Few principles in Nevada law are more deeply established than the notion that the
6 employment relationship is presumed to be at will.⁷⁹ “[A]t-will employment can be terminated
7 without liability by either the employer or the employee at any time and for any reason or no
8 reason”⁸⁰ as long as it does not offend strong public policy concerns.⁸¹ “This presumption may
9 be rebutted by proving, by a preponderance of the evidence, that there was an express or implied
10 contract between the employer and the employee [that] indicates that the employer would only
11 terminate the employee for cause.”⁸² And every contract under Nevada law carries with it the
12 immutable, implied covenant of good faith and fair dealing.⁸³

13 So, to prevail on her breach-of-contract and bad-faith claims, Bullard must show that she
14 and the District had a for-cause termination relationship, and this, the District urges, she cannot
15 do. A valid and enforceable contract requires “an offer and acceptance, meeting of the minds [of
16 the two parties], and consideration.”⁸⁴ And the District argues that Bullard cannot establish any
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19 ⁷⁷ ECF No. 32 at 15–16.

20 ⁷⁸ *Id.*

21 ⁷⁹ *See, e.g., Dillard Dep’t Stores, Inc. v. Beckwith*, 989 P.2d 882, 884–85 (Nev. 1999).

22 ⁸⁰ *Martin v. Sears, Roebuck and Co.*, 899 P.2d 551, 553 (Nev. 1995).

23 ⁸¹ *K Mart v. Ponsock*, 732 P.2d 1364, 1369 (Nev. 1987).

24 ⁸² *American Bank Stationery v. Farmer*, 799 P.2d 1100, 1101–02 (Nev. 1990).

25 ⁸³ *Pemberton v. Farmers Ins. Exchange*, 858 P.2d 380, 382 (Nev. 1993).

26 ⁸⁴ *Meritage Homes of Nevada, Inc. v. FNBN-Rescon I, LLC*, 86 F. Supp. 3d 1130, 1139 (D. Nev.
27 2015) (citing *May v. Anderson*, 119 P.3d 1254 (Nev. 2005)).
28

1 of these required elements.⁸⁵

2 ***b. No oral contract was formed during the interview.***

3 In support of her oral-contract theory, Bullard claims that she was told during her
4 interview that she would be employed for life and that this promise was conveyed to her on
5 several occasions.⁸⁶ She cites to the same record exhibit for each contention—her own
6 declaration.⁸⁷ She attests that she remembers the “exact words” said during her interview “to this
7 day.”⁸⁸

8 My interview with Pat Mulroy, I remember her exact words to this
9 day, and I have it reflected in my documentation. She mentioned
10 to me that HR needs a facelift and that there have been issues in
11 human resources. She did not enumerate - - she did not, you know,
12 talk about how in depth that was but a facelift was needed.

13 “We would like to put the division there. We were also moving
14 the safety division over to human resources for that facelift. I’m
15 not sure if you belong there but we’ll start there to begin with.
16 **There’s a lot of opportunity. It’s a wonderful place to work
17 and a wonderful place for retirement.**” So I was encouraged
18 longevity of a good job and lots of benefits.⁸⁹

19 Bullard also claims that “Pat Mulroy told [her] in [her] interview, that after seven years of
20 employment with the District, employees begin to receive a longevity bonus—two hundred
21 dollars for every year in service.”⁹⁰

22 But Nevada law recognizes that “[g]eneral expressions of long term employment or job
23 advancement do not convert an at-will employment contract to a termination[-]only[-]for[-]cause

24 ⁸⁵ ECF No. 71 at 9.

25 ⁸⁶ ECF No. 77 at 5:12–15.

26 ⁸⁷ *Id.* (citing “Ex. A: ¶ 4–5” which corresponds to ECF No. 77-1 at 3).

27 ⁸⁸ ECF No. 71-7 at 6.

28 ⁸⁹ *Id.* at 6–7 (36:15–37:3 of the transcript) (emphasis added).

⁹⁰ ECF No. 77-1 at 3, ¶ 5.

1 contract.”⁹¹ Nowhere in Bullard’s retelling of Mulroy’s statements is there a promise of lifelong
2 employment, and Bullard offers no evidence of other statements that she believes were promises
3 for lifelong employment. So, Bullard simply fails to show that she had an oral employment
4 contract with the District. The District is entitled to summary judgment on Bullard’s breach-of-
5 an-oral-contract theory.

6 ***c. The employment handbook is not an employment contract.***

7 Bullard also argues that an implied employment contract was created by the bumping
8 provisions in the District’s employee handbook.⁹² She contends that the handbook “promise[s]
9 employees that they will be laid off based on seniority” and guarantees the right to “bump a
10 lower-paid employee” if they are subject to a layoff.⁹³ And she claims that the District violated
11 this provision because it “disposed of almost the entire training staff, but retained one employee
12 who was less qualified and who had less seniority than” she did.⁹⁴

13 But Bullard overstates the plain language of the handbook’s bumping-and-layoff policy,
14 which shows that the District made no absolute promises. The provision is rife with
15 qualifiers—it states that employees will “*generally* be laid off” according to seniority “*unless*
16 business needs dictate otherwise.”⁹⁵ And it affords the District wide discretion in its
17 implementation:

18 Employees who are subject to layoff but who have a greater length
19 of service with the District than employees in another equal or
20 lower-paid job classification may, *if the District concludes that*
21 *they are qualified*, (1) be *permitted* to “bump” the least senior
22 employee from the lower paid classification, (2) *may* be assigned
23 elsewhere to available temporary work which they are qualified to

23 ⁹¹ *Vancheri v. GNLV Corp.*, 777 P.2d 366, 369 (Nev. 1989).

24 ⁹² ECF No. 77 at 6.

25 ⁹³ *Id.* at 7.

26 ⁹⁴ *Id.* at 6.

27 ⁹⁵ ECF No. 77-2 at 23 (emphasis added).

perform, or (3) *if no such work is available, be laid off*.⁹⁶

So, the language of this bumping-and-layoff policy fails to support Bullard's theory.

But even if this policy could, as Bullard claims, create an "ambiguity" about whether her employment was contract-based or at will,⁹⁷ the handbook's express disclaimers removed any doubt. On its introductory page, the handbook states—twice—that "[t]he information contained herein shall not be deemed to create a vested or contractual right for any employee" and that "[n]othing in this handbook should be interpreted to grant an employee a right or entitlement to employment nor, once employed, a right or entitlement to continued employment or a guaranteed continuance of any of the working conditions, pay provisions, or benefits set forth in this handbook."⁹⁸ Even if an employee reading the handbook could have forgotten about the at-will nature of her employment by the time she got to the bumping-and-layoff policy on page 17, that policy itself contains the clear reminder that "the employment relationship at the District is considered to be 'at-will,' and thus subject to termination at any time for whatever reason"⁹⁹:

LAYOFF AND RECALL PROCEDURE

Bumping and Layoff: Should it become necessary to implement a reduction in the workforce causing a layoff of employees, reasonable efforts are made to give advance notice to affected employees. Notice will be provided consistent with the requirements of the Worker Adjustment and Retraining Notification (WARN) Act.

While the employment relationship at the District is considered to be "at-will," and thus subject to termination at any time for whatever reason, unless business needs dictate otherwise, employees from the affected job classifications will generally be laid off in the following order:

1. temporary employees,
2. employees in the introductory period, and
3. regular employees.

When it becomes necessary to lay off a regular employee, skill, ability, and length of service are the determining factors. Where skill and ability are approximately equal, length of service governs.

⁹⁶ *Id.* (emphasis added).

⁹⁷ ECF No. 77 at 7.

⁹⁸ ECF No. 77-2 at 4.

⁹⁹ Compare ECF No. 77 at 6 with ECF No. 77-2 at 23.

1 While “employer practices and policies as reflected in an employee handbook” may infer
2 “contractual obligations,”¹⁰⁰ “the employer can easily prevent this inference from arising by
3 including in its handbook an express disclaimer of implied contractual liability.”¹⁰¹ And that is
4 precisely what the District did here.¹⁰² “Employment at-will is not automatically transformed to
5 employment terminable for cause merely because of the existence of an employees’ handbook
6 explaining a company’s policies regarding termination.”¹⁰³ To allow otherwise “could
7 discourage companies from publishing [employee] handbooks.”¹⁰⁴

8 The District’s handbook unambiguously disclaims any possibility of converting at-will
9 employment to for-cause employment on the basis of its provisions, and Bullard has not shown
10 that the handbook formed the basis for an implied employment contract. So, I grant summary
11 judgment in the District’s favor on the remainder of Bullard’s breach-of-contract claim. And
12 because Bullard fails to show that an employment contract existed—and without a contract, there
13 can be no implied covenant—I grant summary judgment for the District on her breach-of-the-
14 implied-covenant claim, too.

15 **3. *Bullard fails to show that she suffered discrimination based on her age and that***
16 ***the District’s legitimate, nondiscriminatory reasons for terminating her were***
mere pretext for age discrimination.

17 As I explained *supra* in Section (B)(1)(a)(ii), to survive summary judgment on her ADEA
18 age-discrimination claim, Bullard must present a prima facie case of age discrimination. Then
19 the District has an opportunity to provide a legitimate, nondiscriminatory reason for Bullard’s
20

21 ¹⁰⁰ *D’Angelo v. Gardner*, 819 P.2d 206, 209 (Nev. 1991).

22 ¹⁰¹ *Id.* at 209 n.4.

23 ¹⁰² Bullard even acknowledged in her deposition that she knew that she could be terminated at
24 any time for whatever reason and that she was not “relying on the handbook as a basis for
25 asserting that [she had] a contract with the District.” ECF No. 82-2 (Bullard depo. transcript at
26 69:15–17).

27 ¹⁰³ *Martin v. Sears, Roebuck & Co.*, 899 P.2d 551, 554 (Nev. 1995).

28 ¹⁰⁴ *Id.*

1 termination. If it does, the burden shifts back to Bullard to show that the District’s reasons were
2 merely a pretext for age discrimination.¹⁰⁵ As part of presenting a prima facie case, Bullard must
3 show that her age was *the* but-for cause of her termination.

4 The District argues that Bullard cannot satisfy the but-for-causation test, and even if she
5 could, she cannot offer any evidence of pretext.¹⁰⁶ Bullard responds that she established a prima
6 facie case because “the Water District needed and continues to need employees to perform [her]
7 job functions.”¹⁰⁷ But she cites no evidence in the record to support her claim, and the only
8 evidence that I can find is her own declaration in which she states that, “[w]hile the projects [she]
9 was responsible [sic] decreased because of the recession, they never ceased because of the
10 recession and they continue regardless of the status of the economy.”¹⁰⁸ This isn’t enough.

11 In the Ninth Circuit, “a conclusory, self-serving affidavit, lacking detailed facts and any
12 supporting evidence, is insufficient to create a genuine issue of material fact.”¹⁰⁹ A “summary
13 judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by
14 factual data.”¹¹⁰ So, “[w]hen the nonmoving party relies only on its own affidavits to oppose
15 summary judgment, it cannot rely on conclusory allegations unsupported by factual data to create
16 an issue of material fact.”¹¹¹ Even if I could conclude that Bullard would have personal

18 ¹⁰⁵ See *supra* at page 8.

19 ¹⁰⁶ ECF Nos. 71 at 14–20; 82 at 15–20.

20 ¹⁰⁷ ECF No. 77 at 9.

21 ¹⁰⁸ ECF No. 77-1 at 5, ¶ 31.

22 ¹⁰⁹ *F.T.C. v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997).

23 ¹¹⁰ *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); see also *Villiarimo v. Aloha Island Air,*
24 *Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002) (“[T]his court has refused to find a genuine issue where
25 the only evidence presented is uncorroborated and self-serving testimony.”) (internal citations
26 omitted); *Marks v. United States*, 578 F.2d 261, 263 (9th Cir. 1978) (“Conclusory allegations
27 unsupported by factual data will not create a triable issue of fact.”).

28 ¹¹¹ *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

1 knowledge of the District’s operations since her departure—a qualification that she has not
2 demonstrated in her affidavit¹¹²—these conclusory, fact-deficient attestations fail as a matter of
3 law.

4 Even if Bullard had established a prima facie case of age discrimination, but-for causation
5 is still lacking. Bullard bases this claim on two facts: (1) she was “the oldest HR manager” and
6 (2) the only person in her department to survive the layoffs was younger than her.¹¹³ But she
7 admitted in her deposition that every person in her department was over 40, including that lone
8 remaining employee.¹¹⁴ So these facts fail to show—and she has not offered any other evidence
9 to show—that she was treated differently than similarly situated co-workers because of her age.
10 Bullard has thus failed to show that genuine issues of material fact exist to preclude me from
11 entering summary judgment in the District’s favor on her ADEA age-discrimination claim.¹¹⁵

12 **Conclusion**

13 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the
14 District’s motion for summary judgment **[ECF No. 71] is GRANTED.**

15 IT IS FURTHER ORDERED that the parties’ stipulation to consolidate this case with
16 2:15-cv-00981-RFB-PAL for all further purposes **[ECF No. 81] is DENIED as moot.**

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23 ¹¹² See ECF No. 77-1 at ¶¶ 28–32.


24 ¹¹³ ECF No. 71 at 16.

25 ¹¹⁴ ECF No. 71-11 at 3–4 (213:13–214:6 of the transcript).

26 ¹¹⁵ Because Bullard has not shown that she can present a prima facie case of age discrimination,
27 and because I grant summary judgment on that basis, I need not (so do not) reach her mere-
28 pretext argument.

The **Clerk of Court** is directed to **ENTER JUDGMENT** in favor of the Las Vegas Valley Water District and **CLOSE THIS CASE**.

DATED: February 5, 2018.


U.S. District Judge Jennifer A. Dorsey